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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ESTATE OF VIOLA B. SPAULDING,  
*et al.*,

*Plaintiffs,*

v.

YORK CLEANERS, INC., *et al.*

*Defendants.*

Case No. C 08-00672

**JOINT INITIAL CASE MANAGEMENT  
CONFERENCE STATEMENT AND  
[PROPOSED] ORDER**

CMC Date: August 22, 2008  
CMC Time: 10:00 a.m.  
Court Rm.: 8 on the 19th Floor

Jury Trial Demanded  
Trial Date: None set

**AND RELATED COUNTERCLAIMS,  
CROSS-CLAIMS, AND THIRD-  
PARTY CLAIMS**

Plaintiffs and Counter-Defendants Estate of Viola B. Spaulding, Florence Spaulding, Trustee; Lynn Spaulding, doing business as Spaulding Enterprizes; Tina Spaulding Ward, doing business as Spaulding Enterprizes, and the Conservatorship of Eileen Spaulding (collectively, "Spaulding"); Defendants and Counter-Claimants David Victor Lewis and York Cleaners, Inc. ("York"); Defendant, Cross-Complainant, and Third-Party Claimant Martin Franchises, Inc. ("Martin"); and Third-Party Defendant Cooper Industries, LLC, as successor-in-interest to McGraw-Edison Company ("Cooper") jointly submit this Initial Case Management Statement and Proposed Order and request the Court to adopt it as its Initial Case Management Order in this case. Where the parties have set forth separate statements related in the below sections the parties do not adopt each others statements in this joint initial case management statement and proposed order.

**1. Jurisdiction and Service**

Defendants and Cross-Defendants Seth Dole and Ruth Dole have not been served as their whereabouts (if they are still living) are unknown. Counsel for York heard from

1 an insurance investigator that the Doles are deceased. If the Doles are indeed deceased,  
2 but were insured, service will be made on their insurance carrier pursuant to Probate  
3 Code section 550 *et seq.*

4 There is also a dispute as to whether Estate of Barnard Lewis has been properly  
5 served as counsel for York contends service on David Victor Lewis is ineffective  
6 because he has not been appointed executor of his father's estate.

7 Third-Party Defendant Cooper appeared in the case on June 23, 2008. After some  
8 initial discovery, Spaulding and York may amend to include Cooper in their pleadings.  
9 In addition, discovery may identify additional persons who should be parties to this  
10 action. In such case the parties will meet and confer regarding a stipulation to amend the  
11 pleadings.

12 The parties stipulate to electronic service of documents not filed electronically  
13 with the court (*e.g.*, discovery requests and responses)

## 14 **2. Facts**

15 This is an environmental case between a landowner and the former owners and  
16 operators of a dry cleaning business over who ought to be held responsible for  
17 addressing the allegedly contaminated soil and groundwater at and around the property.  
18 Plaintiffs allege that Martin operated or franchised a One-Hour Martinizing dry cleaning  
19 business at the property in the 1960s. It is believed that Barnard Lewis bought the  
20 franchise around 1972 and continued to operate under the Martin mark for a period of  
21 time and then changed the name to York Cleaners. Spaulding alleges that during both  
22 the Martin and York operations, tetrachlorethylene ("PCE") was used as the industrial  
23 solvent in the dry cleaning equipment and that PCE was released into the environment  
24 at the site and has been detected in the soil and groundwater. The California Regional  
25 Water Quality Control Board – San Francisco Bay Region is requiring Spaulding to  
26 investigate and remediate the contamination. To date, Spaulding has spent  
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1 approximately \$100,000 in response costs relating to its investigation of the  
2 contamination. Pursuant to the Court's request, since the last case management  
3 conference Spaulding has furthered its investigation in an attempt to quantify the extent  
4 of the property damage. Spaulding now believes, based on the information available to  
5 date, that the investigation and remediation of the contamination can be accomplished  
6 for approximately \$700,000.

7       The principal factual issues in dispute will be the source, nature, extent, timing,  
8 and cause of the contamination. In addition, York Cleaners, Inc. and David Victor Lewis  
9 contend that any contamination occurred as a result of the negligence and breach of lease  
10 by Spaulding and/or as a result of products liability related issues with the equipment  
11 manufactured and/or installed by Martin and/or Cooper. York and Lewis also contend  
12 that a settlement was reached in the prior lawsuit between the Spauldings and the Lewis'  
13 pursuant to which all claims were waived and released under California Civil Code  
14 section 1542. Spaulding disputes that any of its acts or omissions have adversely  
15 impacted the soil or groundwater at the site. Spaulding also disputes that the alleged  
16 concrete floor with no impermeable membrane is associated with the dry cleaning  
17 equipment or spills of PCE. Spaulding further disputes that it failed to maintain the  
18 premises in good condition and repair. Finally, Spaulding disputes that it waived its  
19 rights under California Civil Code section 1542 in a previous action filed in Marin  
20 County Superior Court. Martin disputes any liability as Cooper, and not Martin, was the  
21 franchisor from the 1960s until May 1978. In May 1978, Martin purchased the franchise  
22 from Cooper in an asset purchase. Martin cancelled the franchise in 1981. It has no  
23 knowledge about information during critical times in 1960s and 1970s and has very few  
24 records. Thus, at this time, Martin must contest most facts as simply unknown. Cooper  
25 disputes that it has any prospective liability relating to the One Hour Martinizing  
26 franchise which it contends appears to have been operated at the premises from  
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1 approximately 1968 to 1981, first by Dole, then by Lewis. Cooper contends that based  
2 upon the relevant Purchase Agreement documents executed in May 1978, Martin has any  
3 such liability, not Cooper. At most, Cooper's predecessor, McGraw, merely sold certain  
4 non-defective dry cleaning equipment.

### 5 **3. Legal Issues**

#### 6 **a. Spaulding's Disputed Legal Issues.**

7 Spaulding disputes that the arbitration clauses contained in the lease agreements  
8 have any force or effect as they are not initialed by any of the parties. Spaulding  
9 disputes that the alleged California Civil Code section 1542 waiver of rights bars the  
10 claims made in this lawsuit.

#### 11 **b. York's Disputed Legal Issues.**

12 York disputes the legal standing of the various plaintiffs to maintain the action  
13 based on the settlement reached in prior litigation. York further disputes its liability  
14 under the applicable law, and York further contends that any liability is properly that of  
15 the land owners, prior or subsequent business operators and/or the equipment  
16 manufacturers and installers.

#### 17 **c. Martin's Disputed Legal Issues.**

18 Martin disputes any legal liability. Martin was not the franchisor for any  
19 meaningful time regarding this matter. Legal obligations, if any, on behalf of any  
20 franchisor would be that of Cooper. Any attempt at liability of Martin should be subject  
21 matter of Cooper's indemnity obligation to Martin.

#### 22 **d. Cooper's Disputed Legal Issues.**

23 Cooper disputes that it has any prospective liability relating to the One Hour  
24 Martinizing franchise. Cooper contends that based upon the relevant Purchase  
25 Agreement documents executed in May 1978, Martin has any such liability, not Cooper.  
26 Cooper disputes that it has any indemnity obligation to Martin regarding the franchise  
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1 based on these documents.

2 **4. Motions**

3 **a. Spaulding's Dispositive Motion Statement:**

4 Spaulding intends to file a Motion for Preliminary and Permanent Injunction  
5 against Defendants, a Motion for Summary Judgment or for partial Summary Judgment,  
6 and will likely move to summarily remove various affirmative defense raised by  
7 Defendants. Spaulding requests leave to bring more than one summary judgment motion  
8 in this matter related to various affirmative defenses and related to liability of the current  
9 defendants and future defendants which may be served or added in this matter.

10 **b. York's Dispositive Motion Statement:**

11 York intends to file a dispositive motion relating to the prior settlement of  
12 litigation between the parties. York may also move for summary judgment or  
13 adjudication on various legal theories asserted by Spaulding and various items of  
14 damages.

15 **c. Martin's Dispositive Motion Statement:**

16 Martin needs to conduct discovery to help assist at dispositive motions regarding  
17 (1) no legal liability; and (2) summary judgment against Cooper regarding its indemnity  
18 obligation.

19 **d. Cooper's Dispositive Motion Statement:**

20 Cooper may move for summary judgment or partial summary judgment at the  
21 appropriate time: with respect to Martin Franchises, Inc.'s claims of contractual  
22 indemnity and declaratory relief, based on the relevant documents concerning liability  
23 for the franchise operations; and also generally with respect to the absence of evidence  
24 that McGraw equipment caused any of plaintiffs' alleged damages.  
25

26 **5. Amendment of Pleadings**

27 The parties anticipate that pleadings may need to be amended after some initial  
28

1 discovery to add additional parties. In such case the parties will meet and confer  
2 regarding a stipulation to amend the pleadings.

### 3 **6. Evidence Preservation**

4 The facts of this case span into the 1960s. The parties will diligently attempt to  
5 preserve evidence relevant to the issues reasonably evident in this action. Spaulding is  
6 concerned that with the passage of time information related to the historical dry cleaning  
7 operations will be lost. Indeed, Barnard Lewis passed away shortly before the 90-day  
8 pre-suit notice period had run.

### 9 **7. Disclosures**

10 Spaulding, York, and Martin served their initial disclosures on May 9, 2008  
11 pursuant to the court's Order Setting Initial Case Management Conference and ADR  
12 Deadlines. Cooper states that it will serve its initial disclosures on or before August 21,  
13 2008.

### 14 **8. Discovery**

15 The Court imposed a temporary stay on discovery at the last case management  
16 conference and thus no discovery has been taken to date. As discussed in Section 6  
17 above, Spaulding is concerned about the preservation of evidence as many of the  
18 witnesses at the site may be elderly. Based on the number of parties, the number of  
19 witnesses which may need to be called, and the extensive factual history related to this  
20 matter, Spaulding believes that the default limitation imposed by the Federal Rules on  
21 discovery are not appropriate. York disagrees. As a compromise and pursuant to Fed.  
22 R. Civ. P. 26(f), the parties request that the initial discovery limitations be set, unless  
23 modified by the parties in writing or by order of this Court, as follows:

- 24
- 25 a. Depositions: Depositions of fact and expert witnesses will be limited to one seven  
26 hour day. No other limitation on depositions shall apply.
  - 27 b. Interrogatories: Interrogatories shall be limited to 50 interrogatories.
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1 c. Request for Admissions: There shall be no limitation on the number of requests  
2 for admissions. The parties may agree to issue one set of request for admissions  
3 for multiple parties represented by the same counsel.

4 d. Request for Inspection and Documents. There shall be no limitation on the  
5 number of requests for inspection and documents.

## 6 **9. Related Cases**

7 David Victor Lewis's answer and counterclaim identifies a previous dispute  
8 between some of the parties: *Lynn Spaulding v. David Lewis and Barnard Lewis*, Case  
9 No. CIV994752 (Marin County Superior Court). The case was resolved and is no longer  
10 pending.

## 11 **10. Relief**

12 The complaint, counterclaim, cross-claims, and third-party complaint seek  
13 damages for costs of investigation and cleanup, injunctive relief, contribution, indemnity  
14 and declaratory relief. The cost of investigation and cleanup is unknown at this time.

## 15 **11. Settlement and ADR**

16 The parties have agreed and stipulated to attempt to resolve this matter by  
17 mediation. The parties had an initial telephone conference with court appointed  
18 mediator Daniel Bowling on July 29, 2008. A second conference call with Mr. Bowling  
19 is scheduled for August 26, 2008. Although not involved in the initial telephone  
20 conference with Mr. Bowling, Cooper agrees to participate in the mediation process  
21 currently underway. Cooper had a separate telephone conference with Mr. Bowling  
22 following the July 29 conference and was apprised of what was discussed on the group  
23 call. Cooper plans to participate in the upcoming August 26, 2008 telephone conference  
24 with Mr. Bowling.  
25

## 26 **12. Consent to Magistrate Judge for All Purposes**

27 The parties request that this case not be assigned to a U.S. Magistrate.  
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### 13. Narrowing of Issues

It is anticipated that many facts can be stipulated to such as time frame of ownership and operation of dry cleaning business, use of PCE, types of dry cleaning equipment used, and others through stipulated facts. For the most part, the parties do not anticipate that bifurcation of issues, claims, or defenses will be necessary; although York suggests that bifurcation of liability and damages may be appropriate as it may be that some parties will be out of the case before the damages phase starts and such bifurcation can help narrow the case.

### 14. Expedited Schedule

Based on the amount of discovery that will be necessary and the technical nature of an environmental case, this case cannot be handled on an expedited basis.

### 15. Scheduling

The parties suggest the following dates:

Cut-off date for Amending Pleading	December 29, 2008
General Discovery Cutoff	May 4, 2009
Expert Designation	June 1, 2009
Supplemental Expert Designation	June 15, 2009
Dispositive Motions Heard By	July 13, 2009
Expert Discovery Cutoff	July 13, 2009
Motion <i>In Limine</i>	July 27, 2009
Response to <i>Motion In Limine</i>	August 3, 2009
Trial Date	August 10, 2009

Cooper disagrees that this case will be ready for trial as early as August 10, 2009, and suggests that trial be set to commence no earlier than November of 2009. York also disagrees with these dates on the basis that the environmental assessment and remediation plan has not been submitted to or approved by the RWQCB and that any

1 action in advance of such approval is premature. Counsel for York suggests that the  
2 Court enter a further stay of proceedings for an additional 90 days and that, if the Court  
3 does intend to set certain dates the suggested dates be moved back by 120-180 days.

4 **16. Trial**

5 The parties estimate that the jury trial in this case will take approximately three  
6 to four weeks.

7 **17. Disclosure of Non-Party Interested Entities or Persons**

8 The parties have or will file the "Certification of Interested Entities or Persons"  
9 as required by Civil Local Rule 3-16.

10 Spaulding perceives that the following non-party may have an interest in this case:  
11 (1) The California Regional Water Quality Control Board – San Francisco Bay Region  
12 and (2) The Travelers Insurance Company.

13  
14 DATED: August 12, 2008

PALADIN LAW GROUP® LLP

15  
16 By: \_\_\_\_\_/S/  
17 Bret A. Stone  
18 Counsel for Spaulding

19  
20 DATED: August 12, 2008

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POULOS LLP

21  
22 By: \_\_\_\_\_/S/  
23 Gregory W. Poulos  
24 Counsel for David Victor Lewis and York  
25 Cleaners, Inc.  
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1 DATED: August 12, 2008

SEDGWICK, DETERT, MORAN & ARNOLD  
LLP

2  
3  
4 By: /S/  
Robert N. Berg  
5 Counsel for Martin Franchises, Inc.

6 DATED: August 12, 2008

GORDON & REES LLP

7  
8 By: /S/  
9 P. Gerhardt Zacher  
Counsel for Cooper Industries, LLC  
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CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition, the Court orders the following:

DATED: August \_\_, 2008

\_\_\_\_\_  
United States District Judge